Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Joint Petition for	)	
Rulemaking to Establish Rules	)	RM-8380
for Subscriber Access	)	
to Cable Home Wiring for the	)	
Delivery of Competing and	)	
Complimentary Video Services	)	

Comments of
CONTINENTAL CABLEVISION, INC.

I. INTRODUCTION AND SUMMARY

Continental Cablevision, Inc. ("Continental") submits these comments in response to the above-captioned joint petition for rulemaking filed by the Media Access Project, the United States Telephone Association, and Citizens for a Sound Economy Foundation ("Joint Petitioners"). The Joint Petitioners urge the Commission to initiate a rulemaking "to determine how cable subscribers may have access to cable home wiring for the delivery of competing and complementary services before termination of service."[1/]

The Joint Petitioners' request must be rejected. As the Commission itself already has acknowledged, the issuance of pre-termination of service home wiring rules would exceed the scope

---

1/ Joint Petition at 3 (emphasis added).

of the 1992 Cable Act.[2/] Such rules also would resurrect and substantially expand the theft-of-service problems that the Commission sought to resolve in its February 1 Report and Order on cable home wiring.[3/] In addition, the Joint Petitioners' request would implicate a complex set of ownership issues that do not arise as long as the Commission's inside wiring rules only apply after termination of cable service. Finally, the Commission must decline the Joint Petitioners' invitation to use telephone inside wiring rules as a model for cable home wiring, since those rules fail to account for such significant factors as theft-of-service and signal leakage.

Congress' manifest refusal to authorize the Commission to issue rules covering treatment of the home wire prior to termination of service reflected a careful balancing of the competitive issues with equally compelling concerns for signal leakage and theft of service. The Joint Petitioners' proposal should simply be seen for what it is -- a blatant attempt to rewrite the 1992 Cable Act in clear disregard of the legislative intent and the pragmatic concerns underlying the limits placed on the Commission's rulemaking authority by Congress. To the extent that any subsequent technological or competitive developments warrant a reexamination of the current home wiring policy

---

[2/] See In the Matter of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, Report and Order, MM Docket 92-260, February 1, 1993 ("Report and Order") at ¶ 5.

[3/] Id. at ¶ 7.

framework, the Commission should allow that process to be initiated by Congress in the context of legislation addressing cable/telco competition and telecommunications infrastructure issues.

II. PRE-TERMINATION HOME WIRING RULES WOULD EXCEED THE SCOPE OF THE COMMISSION'S AUTHORITY UNDER THE 1992 CABLE ACT.

The 1992 Cable Act requires the Commission to "prescribe rules concerning the disposition, *after a subscriber to a cable system terminates service*, of any cable installed by the cable operator within the premises of such subscriber."[4/] On its face, this language permits the FCC to issue rules covering only the disposition of the wire after a subscriber has terminated service. The facial language of the statute provides the Commission with no authority to issue pre-termination inside wiring rules.

The legislative history confirms this interpretation. The House Report stated that the Act "does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service."[5/] Indeed, the House Report suggested that Congressional authorization of a pre-termination rulemaking could conflict with the policy of investing cable

---

[4/] 47 U.S.C. § 624(i)(emphasis added).

[5/] H.R. Rep. No. 628, 102d Cong. 2d Sess. at 118 (1992)("House Report"). Similarly, the Senate Report states that the Act only "addresses the issue of what happens to the cable wiring inside a home when a subscriber terminates service." S. Rep. No. 92, 102d Cong. 1st Sess. at 23 (1991)("Senate Report").

operators with the "legal responsibility to prevent signal leakage."[6/]

Congress specifically circumscribed the Commission's rulemaking authority on inside wiring. Section 624(i) of the Cable Act limits the Commission's rulemaking power on inside wiring only to instances in which a subscriber's service has been terminated. Thus, contrary to the suggestion of the Joint Petitioners, the Commission cannot ground the requested rulemaking in Title I of the Communications Act of 1934.[7/] Congress' specific delineation of the Commission's rulemaking authority over inside wiring takes precedence over the general mandate provided in Title I.[8/]

The Commission's Report and Order on inside wiring properly recognized the statutory constraints on its rulemaking authority imposed by the 1992 Cable Act. The Commission noted that "the language of the statute refers only to disposition of cable home wiring after termination of service.[9/] Accordingly, the Commission concluded that it would be "neither necessary or

---

[6/] See House Report at 118-19.

[7/] See Joint Petition at 8.

[8/] Cf. Gozlon-Peretz v. U.S., ___ U.S. ___, 111 S. Ct. 840, 848 (1991), 112 L.Ed.2d 919 (1991); Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973); Washington Water Power Co. v. FERC, 775 F.2d 305, 323 (D.C. Cir. 1985); Lawrence v. Staats, 640 F.2d 427, 432 (D.C. Cir. 1981).

[9/] Report and Order at ¶ 6.

appropriate under the statute" to apply the inside wiring rules "before the point of termination."[10/]

No intervening events have transpired since adoption of the Commission's rules that would provide any valid basis for changing that conclusion. The Joint Petitioners suggest that the Commission should revisit these rules because its video dialtone decision has enhanced the prospects for greater competition in the provision of multichannel video programming, therefore underlining the importance of expanding subscriber access to home wiring.[11/] This argument lacks any merit. Congress clearly grasped the relationship between the inside wire and the heightened prospects for competition wrought by technological convergence and entry by alternative providers.[12/] Indeed, the 1992 Cable Act's inside wiring provisions were enacted by Congress several months after the FCC had adopted its video dialtone plan. Nevertheless, while aware of the FCC's video dialtone order, Congress refused to endow the Commission with authority to issue rules covering home wire disposition prior to termination of service. In short, there is no basis for concluding that either Congress or the Commission failed to grasp the heightened prospects for cable/telco competition that the Joint Petitioners now claim triggers the need for a new rulemaking.

10/ Id. at ¶ 8.

11/ Joint Petition at 3-4.

12/ See e.g. House Report at 118.

III. MANDATING PRE-TERMINATION DISPOSITION OF HOME WIRING AGGRAVATES THEFT OF SERVICE CONCERNS THAT BOTH CONGRESS AND THE COMMISSION HAVE SOUGHT TO AVOID

Congress instructed the Commission to issue inside wiring rules that take cognizance of the serious theft of service problems that confront the cable industry.[13/] Continental addressed this issue extensively in comments it filed in connection with the Commission's home wiring rulemaking.[14/] Theft of service often occurs after subscribers disconnect their cable service and then use illegal traps and converters to intercept the cable signals that are then transmitted to a television set via the internal home wire originally installed by the cable operator.

The FCC specifically acknowledged this problem by crafting its rules to permit cable operators to remove a home wire in instances where a subscriber's service has been terminated involuntarily. While Continental believes that the scope of the problem warrants an even broader safeguard against theft of service than was provided in the FCC's rules,[15/] the degree of protection afforded by those rules would be wholly undermined if

---

13/ House Report at 118.

14/ In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, Comments of Continental Cablevision, Inc. at 3-6 (noting that lost revenues due to theft of service are estimated to be $100 million annually in Los Angeles County alone).

15/ Id. at 4.

the Commission were to mandate pre-termination transfer of home wiring.

The FCC's rules provide that "where ownership of the cable home wiring has been previously transferred to the subscriber by the operator...the wiring is no longer the operator's property to remove."[16/] Accordingly, by eliminating the option for cable operators such as Continental to retain wire ownership during service, the Joint Petitioners' proposal would greatly facilitate the retention of inside wiring by subscribers even after their cable service had been involuntarily terminated. This would recreate the very circumstances that the Commission already has recognized enhance the risk of theft.

Under the current regulatory scheme, most cable operators can voluntarily weigh the risks and benefits associated with transferring ownership of the inside wire by freely choosing whether or not to contract for such a transfer. By comparison, the Joint Petitioners' proposal would force cable operators to assume those risks and thereby aggravate the theft-of-service concerns that both Congress and the Commission have sought to avoid.

IV. MANDATING PRE-TERMINATION TRANSFER OF INSIDE WIRING WOULD CREATE COMPLICATED OWNERSHIP AND TAX ISSUES

Forcing cable operators to transfer home wiring to subscribers prior to termination of service would engender a host of complicated tax consequences for operators. As the Commission

---

[16/] Report and Order at ¶ 7.

itself has recognized, the treatment of cable home wiring ownership for tax purposes varies from state to state.[17/] In some states, the wire is treated as a permanent accession to the subscriber's home. In other states the wire's ownership is ascribed to cable operators for tax purposes.

Adoption of federal rules to facilitate pre-termination transfers of home wiring would add an extra layer of complexity on top of what is already a complicated local tax issue. The establishment of pre-termination ownership rules by the FCC could create doubts about the continued validity of the manner in which some states treat home wiring for tax purposes. Moreover, in those states that ascribe the wire to operators for tax purposes, mandated pre-termination transfer rules could seriously complicate local tax planning, since operators will not know how long they actually will be retaining a significant taxable asset before subscribers assert their rights of ownership and control.

V. THE COMMISSION'S INSIDE WIRING RULES FOR TELEPHONE COMPANIES ARE AN INAPPROPRIATE MODEL FOR THE CABLE INDUSTRY

The Commission must reject the Joint Petitioners' suggestion that inside wiring rules applicable to telephone companies should be used as a model for treatment of cable industry home wiring. The legislative history of the Cable Act reveals that Congress did not "intend that cable operators be treated as common

---

[17/] In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, Notice of Proposed Rulemaking, MM Docket No. 92-260, November 5, 1992, at ¶ 5.

carriers with respect to the internal cabling installed in subscribers' homes."[18/]

Congress' refusal to apply the telphone company inside wiring rules to the cable industry reflects critical differences between the two businesses. Cable operators encounter far more serious theft of service risk than do telephone companies. Moreover, as the Commission itself has recognized, "cable home wiring is distinguishable from telephone inside wiring in that, for example, cable operators have signal leakage responsibilities not borne by telephone service providers."[19/]

The House Report to the 1992 Cable Act specifically acknowledges this issue by providing that "Nothing in this section should be construed to create any right of a subscriber to inside wiring that would frustrate the cable operator's ability to prevent or protect against signal leakage during the period the cable operator is providing service to such subscriber."[20/] The Joint Petitioners' proposal to apply telco inside wiring rules to cable would accomplish the very result Congress sought to prevent. They envision granting competing providers of telecommunications services "unrestricted access...to cable inside wiring."[21/] But they fail to address,

---

18/ House Report at 118-19.

19/ Report and Order at ¶ 6.

20/ House Report at 119.

21/ Joint Petition at 7.

or even acknowledge, the significantly enhanced risk of signal leakage engendered by their proposal.

The transmission of additional telecommunications services from alternative providers -- that may or may not be using signalling, amplification and trapping devices that are fully compatible with those of the cable operator's -- will inevitably affect both an operator's signal protection capabilities and overall signal quality. Either the task of determining and enforcing signal leakage responsibilities in these circumstances will be enormously complicated and time-consuming, or for simplicity's sake cable operators will be forced to retain full responsibility for ensuring signal quality so long as they provide service over the wire -- even where leakage or degradation is caused by services being transmitted by an alternative provider. Both outcomes are unacceptable for cable operators and would frustrate the important legislative goal of protecting against signal leakage.

A third possible outcome is that such responsibilities will be transferred to subscribers. While transferring signal leakage responsibility to subscribers who assume ownership over their home wire makes sense as a legal matter, it raises practical difficulties -- particularly when cable service is the principal, though not the sole, telecommunications service provided through that wire. Subscribers are likely to be ill-equipped to detect and remedy signal leakage on their own. Moreover, they may hold cable operators responsible for signal leakage or degradation

caused by other providers. Thus, cable's customer relations with subscribers may suffer through no fault of its own.

In short, both the 1992 Act's legislative history and the practical realities of providing cable service preclude the FCC from grafting telco inside wiring rules onto the cable industry.

CONCLUSION

The Commission must reject the rulemaking request sought by the Joint Petitioners since it is clearly beyond the scope of the 1992 Cable Act. Congress grasped the full range of competitive implications surrounding the home wire, and with that knowledge limited the Commission's rulemaking authority in this area to post-termination of service.

Respectfully submitted

Robert J. Sachs
Senior Vice President for
Corporate and Legal Affairs
Howard B. Homonoff
Director of Corporate and
Legal Affairs
Continental Cablevision, Inc.
Lewis Wharf, Pilot House
Boston, Massachusetts 02110
(617) 742-0530

Frank W. Lloyd
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

December 21, 1993
D23526.2

CERTIFICATE OF SERVICE

I, Frank W. Lloyd, hereby certify that a copy of the foregoing Comments of Continental Cablevision, Inc. has been sent by United States mail, first class and postage prepaid, to the following on this 21st day of December, 1993:

* The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

* The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

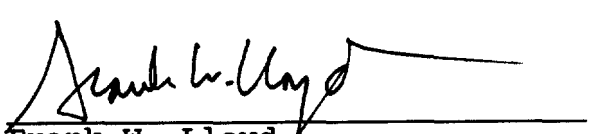
* The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

* The Honorable Ervin S. Duggan
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Gigi B. Sohn
Andrew Jay Schwartzman
MEDIA ACCESS PROJECT
2000 M Street, N.W.
Washington, D.C. 20036

Martin T. McCue
Vice President and General Counsel
UNITED STATES TELEPHONE ASSOCIATION
900 19th Street, N.W.
Suite 600
Washington, D.C. 20006-2105

Phillip Mink
CITIZENS FOR A SOUND ECONOMY
FOUNDATION
1250 H Street, N.W.
7th Floor
Washington, D.C. 20005



Frank W. Lloyd

* - Via Hand Delivery

D23685.1